

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH DAKOTA  
ROOM 211  
FEDERAL BUILDING AND U.S. POST OFFICE  
225 SOUTH PIERRE STREET  
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT  
BANKRUPTCY JUDGE

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October 14, 2004

Brian L. Utzman, Esq.  
Counsel for Debtor  
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Rapid City, South Dakota 57709

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P.O. Box 208  
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Subject: ***In re Darci Fleury***  
Chapter 7; Bankr. No. 04-50203

Dear Mr. Utzman and Mr. McNeary:

The matter before the Court is the Motion for Order Directing Clerk of Court to Discharge Judgment Discharged in Bankruptcy filed by Debtor on August 2, 2004. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and subsequent order shall constitute the Court's findings and conclusions under Fed.Rs.Bankr.P. 7052 and 9014. As set forth below, Debtor's motion will be denied.<sup>1</sup>

**Summary.** On April 23, 2003, Harvest Credit Management IV, LLC ("Harvest Credit") obtained a judgment against Darci Fleury in state court for \$12,080.69. On April 19, 2004, Darci Fleury ("Debtor") filed for relief under chapter 7 of the bankruptcy code. Debtor listed Direct Merchants Bank ("Direct Merchants") as an unsecured creditor with a claim for \$12,080.69 and provided an address for Attorney McNeary in the same "box" on her Schedule F. Debtor listed both Direct Merchants and Attorney McNeary on her mailing list of creditors.<sup>2</sup> Debtor did

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<sup>1</sup> The relevant facts are not in dispute. The issue presented is purely a question of law. Thus, no hearing was held.

<sup>2</sup> Because Debtor's petition was filed electronically, Debtor's mailing list of creditors was "uploaded" into the Court's CM/ECF system.

not, however, list Harvest Credit on her schedules or on her mailing list of creditors.

On April 22, 2004, the Bankruptcy Clerk served notice of commencement of the case on Debtor's creditors, including Direct Merchants. Because Debtor did not list Harvest Credit on her mailing list of creditors, the Bankruptcy Clerk did not serve notice of commencement of the case on Harvest Credit.

The deadline for filing a complaint objecting to discharge or to determine the dischargeability of a particular debt was July 20, 2004. None of Debtor's creditors filed such a complaint. On July 21, 2004, Debtor was therefore granted a discharge under § 727 of the bankruptcy code.

On August 2, 2004, Debtor filed a Motion for Order Directing Clerk of Court to Discharge Judgment Discharged in Bankruptcy. Harvest Credit's judgment was listed in Debtor's motion. Debtor served her motion on Harvest Credit "c/o Jerald M. McNeary." Harvest Credit did not object to Debtor's motion.

On October 1, 2004, Debtor filed an affidavit in support of her Motion, in which Attorney Utzman stated that "Attorney McNeary represented Harvest Credit Management in a collection proceeding" and that "Direct Merchants apparently sold the indebtedness to Harvest Credit Management prior to the garnishment proceeding."<sup>3</sup>

**Discussion.** Section 524(a)(1) of the bankruptcy code provides:

(a) A discharge in a case under this title -

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived[.]

Section 524(a)(1) does not require the debtor to do anything to void a judgment. The discharge automatically voids any judgment that represents a determination of the debtor's personal liability for a debt that has been discharged.

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<sup>3</sup> Presumably, the "collection proceeding" and the "garnishment proceeding" are one and the same and relate to the judgment Debtor wishes to discharge.

Section 15-16-20 of the South Dakota code establishes the procedure for removing such a judgment from the records of the clerk of court for the county in which it was docketed. When a debtor receives a bankruptcy discharge, she may file a motion in the bankruptcy court for an order listing each state court judgment that has been voided. Upon receipt of the bankruptcy court's order, the clerk of court for the county in which the judgment was docketed must enter it in the judgment docket. This has the effect of discharging the listed judgments from and after that date.

In this case, because Debtor did not list Harvest Credit on her mailing list of creditors, Harvest Credit did not receive formal notice of Debtor's bankruptcy filing. As a result, Harvest Credit's claim may not have been discharged. See 11 U.S.C. § 523(a)(3). The only way that can be determined is through an adversary proceeding to determine dischargeability. See Fed.R.Bankr.P. 7001(6). Since no such determination has been made, Debtor's motion to discharge judgments is premature.

Debtor's decision to list Attorney McNeary on her Schedule F does not alter that result. Pursuant to Fed.R.Bankr.P. 1007(a)(1), a debtor's mailing list of creditors must include the "name and address of each creditor." Pursuant to Fed.R.Bankr.P. 1007(b)(1), a debtor's schedules of assets and liabilities must conform to the appropriate Official Forms. Official Forms B6D (Schedule D - Creditors Holding Secured Claims), B6E (Schedule E - Creditors Holding Unsecured Priority Claims), and B6F (Schedule F - Creditors Holding Unsecured Nonpriority Claims) instruct the debtor to provide each "creditor's name, mailing address, including zip code, and account number."

Nothing in either Rule 1007(a)(1) or the Official Forms suggests that a creditor may be scheduled "in care of" an attorney who represented the creditor in the past. This Court therefore agrees with those courts that have held that a creditor must be scheduled at its own address, not that of an attorney who represented the creditor in the past.

[P]roper scheduling of a creditor requires listing the creditor at its own address or at least that of an agent designated for service of process. The Court is mindful that an appropriate address for service on a creditor may change throughout the course of a case by virtue of a notice of appearance filed pursuant to Fed.R.Bankr.P. 2002(g) or by the filing of a proof of claim with a different address, but the initial scheduling which occurs before a creditor or its attorney has made an appearance in the case should be the creditor's own address if it has one.

*Carpet Services, Inc. v. Hutchison (In re Hutchison)*, 187 B.R.

533, 535 (Bankr. S.D. Tex. 1995) (citing cases).

[O]ne cannot serve initial process on an attorney for a party unless the attorney agrees to accept service after authorization from the party. Moreover, it doesn't necessarily follow that because an attorney has represented a client in one case, they will automatically be representing the client in subsequent cases regarding the same issues. It follows that the only safe way to ensure proper service of notices is to serve the creditor directly.

*Midatlantic National Bank v. Kouterick (In re Kouterick)*, 161 B.R. 755, 759 (Bankr. D.N.J. 1993).<sup>4</sup>

The Court will enter an appropriate order.

Sincerely,

/s/ Irvin N. Hoyt

Irvin N. Hoyt  
Bankruptcy Judge

INH:sh

cc: case file (docket original; copies to parties in interest)

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<sup>4</sup> That is not to say that an attorney who represented a creditor in the past should not be listed.

[I]t is certainly a desirable courtesy to list an attorney who is known to have represented a creditor in pre-petition matters regarding the debt in question, in addition to scheduling the creditor separately.

*Kouterick*, 161 B.R. at 759. However, listing the attorney is only a courtesy. Listing the creditor - at the creditor's own address - is a requirement.